

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 714/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2013-14

RRP Ventures Pvt. Ltd.,
No.42, Third Floor,
Kodambakkam High Road,
Nungambakkam,
Chennai – 600 034.

The Income Tax Officer,
Vs. Corporate Ward 5(3),
Chennai.

PAN: AAFCR 8657L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms.N.V. Lakshmi, Advocate
: Shri N. Balakrishnan, CIT

सुनवाई की तारीख/Date of Hearing : 12.03.2024
घोषणा की तारीख/Date of Pronouncement : 12.03.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in Appeal reference No.CIT(A), Chennai-3/10169/2019-20 dated 27.03.2023. The assessment was framed by the Income Tax Officer, Corporate Ward 5(3), Chennai for the assessment year 2013-14 u/s.153C of

the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.12.2019.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 10 days. The order of CIT(A) dated 27.03.2023 was received by the assessee on 27.03.2023 as per Form 36. The appeal has to be filed on or before 26.05.2023 but was filed only on 05.06.2023. The assessee has filed affidavit along with condonation petition stating the reason that it had taken efforts to sign the appeal papers and send the same to its counsel for filing. However, the appeal papers were misplaced by the office clerk whereas the petitioner was of the bonafide belief that the appeal papers were already sent to its counsel for filing the appeal. It is when the counsel informed that he has not received the appeal papers, the assessee realized that the appeal papers were misplaced and thereafter, the appeal papers were signed once again and sent to its counsel. This delay was unintentional and due to the papers got misplaced in its office. When this was pointed out to Id. CIT-DR, he opposed condonation of delay as the cause is not reasonable. After going through the facts and reasons stated and considering the small delay of 10 days, we are inclined to condone the delay. Hence, delay is condoned and appeal is admitted.

3. Brief facts are that the assessee company is engaged in trading of construction machineries, material and tapioca starch. A search u/s.132 of the Act in assessee's sister concern RRP Infra Projects Ltd., was conducted on 24.03.2016. The assessee originally filed its return of income u/s.139(1) of the Act on 20.09.2013 admitting income under normal computation and also computed book profit under the provision of section 115JJB of the Act. Consequent to search action u/s.132 of the Act, in view of information that the assessee has paid on money on account of purchase of property and consequent satisfaction note recorded by AO, a notice u/s.153C of the Act was sent. The assessee company filed return of income in response to notice u/s.153C of the Act wherein it declared income at Rs.10,19,942/- as against originally declared at Rs.19,940/-. The information received by the AO from the Deputy Commissioner of Income-tax, Central Circle 2, Coimbatore reads as under:-

a. "A Search was conducted in the case of M/s. RRP Infra Projects Limited on 24.03.2016. Proceedings u/s 153A have been initiated in this case.

b. During the course of search in the premises of M/s. RRP Infra Projects Limited, a sale agreement dated 20.04.2012 between Mr R. Jaru Anand and M/s. RRP Reality and Developers Pvt Ltd (now known as RRP Ventures P Ltd) was seized vide ANN/RPP/ST/LS/S-9.

c. Analysis of the sale agreement reveals that M/s. RRP Reality and Developers entered into an agreement with M.-R. Jaru Anand to purchase a property in survey No.137/1A1 (DTP No.43/69) situated at Palavakkam

Village, Tambaram Taluk, Kancheepuram District measuring to an extent of 1856 Sq ft together with a building bearing Plot No.202-A for a total consideration of Rs.1.5 crores.

As per the sale agreement, M/s. RRP Reality and Developers has paid a sum of Rs.75 lakhs as advance in the following manner:

Rs.10 lakhs paid in cash

Rs.40 lakhs by cheque

Rs.25 lakhs paid on 23.04.2012 - mode of payment not mentioned in the agreement.

d. Subsequently, after a week from the date of sale agreement, a sale deed dated 27.04.2012 executed between Mr R Jaru Anand and M/s. RRP Reality and Developers P Ltd wherein, the sale consideration of the said property is shown as Rs.70,58,000 and the payments are shown by way of cheque of Rs.40 lakhs and Rs.30.58 lakhs drawn from Indian Overseas Bank, Erode. The above sequence of events and the documents relating to RRP Reality &

4. Consequent to search in the case of RRP Infra Projects Ltd., on 24.03.2016, a document relating to assessee company was seized from sister company of RRP Infra Project Ltd., indicating that the assessee entered into purchase of property in survey No.137/1A1 (DTP No.43/69) situated at Palavakkam Village, Tambaram Taluk, Kancheepuram District measuring to an extent of 1856 Sq.ft., together with a building bearing Plot No.202-A for a total consideration of Rs.1.5 crores. During search, this agreement of sale dated 20.04.2012 was found and seized. During search, a sale deed dated 27.04.2012 was also found and as per sale deed, sale proceeds noted was only Rs.70.58 lakh. According to the AO, the assessee has paid on-money to the extent of Rs.69,42,000/-, which

is not recorded in the books of accounts and hence, the same was treated as unexplained investment u/s.69 of the Act and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) confirmed the action of AO by observing in para 7.2 as under:-

“7.2 From the above, it is seen that there is no dispute in the fact that an agreement dt. 20.4.2012 to purchase the property for a consideration of Rs.1.5 crore was found and seized but the sale deed was registered only for Rs.70.58 lakhs on 27.04.2012, i.e. within a period of one week. As per the agreement a sum of Rs.75 lakhs was paid as advance and there was no condition that the seller should clear the encroachment as claimed during the of assessment proceedings. As per sec. 132(4A), the contents of the documents seized shall be taken as true and correct unless proved otherwise by the assessee. The attempt of the assessee to explain the difference between the agreement price and sale deed price on the ground that initially the seller had undertaken to clear the encroachment but subsequently it was decided that the assessee should clear the encroachment is not borne out by any evidence brought on record by the assessee. If the assessee had actually cleared the encroachment the assessee should have given the evidence for having incurred the expenditure or should have given a copy of the complaint registered with police authorities for clearing the encroachment without incurring any cost. As rightly pointed out by the AO, there is no condition in the agreement that the seller had to clear the encroachment and therefore, the claim of the assessee is only an after-thought. It is found that the assessee has not brought any cogent and reliable evidence to rebut the legal presumption of sec.132(4A) which provides that the contents of any document shall be taken as true and correct. In the circumstances, it is found that the AO was justified in making the addition of Rs.69,42,000/- and the same is confirmed.”

Aggrieved, now assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee contended that the sale consideration recorded in sale deed dated 27.04.2012 is Rs.80.38 lakh out of which Rs.70.58 lakh was sale consideration and balance amount was Rs.10 lakh voluntarily offered in the returned income while filing return of income u/s.153C of the Act. The Id.counsel stated that the owner of the property Shri P. Arulsundaram stated that all encroachment of land will be removed by him and was actually cleared by his contacts and efforts and therefore, the sale consideration recorded in sale agreement dated 23.04.2012 at Rs.1.50 crores was reduced to Rs.70.58 lakhs while registering the sale deed as the seller could not remove the encroachments and the purchaser i.e., the assessee itself invested in removing all encroachments. Shri R. Jaru Anand, seller of the property also appeared before the AO on 28.11.2019 in response to summon u/s.131 of the Act and in his statement admitted the alleged agreement dated 20.04.2012 wherein sale consideration recorded was Rs.1.5 crore but he tried to explain that the sum of Rs.10 lakhs and Rs.25 lakhs was received in cash were actually disbursed for clearance of encroachment but could not give details to whom he made these payments. The Id.counsel before us stated that the seller denied the alleged agreement and admitted only

consideration received was Rs.70.58 lakhs which is in line with Explanation given by Shri P.Arulsundaram. Even Shri Jaru Anand, the seller of the land stated before Department during assessment proceedings in response to summons u/s.131 of the Act dated 28.11.2019 denied he has received the on-money of Rs.25 lakhs and only admitted the sale consideration as recorded in sale deed at Rs.70.58 lakhs.

7. On the other hand, the Id.CIT-DR stated that the seller admitted while deposing u/s.132(4A) of the Act during search proceedings that the total sale consideration was Rs.1.50 crores and this is recorded in the agreement to sale found during the course of search which was not negated. Even the agreement dated 20.04.2012, which was seized and admitted by both the sides. The explanation given by assessee that subsequently this was denied is merely an after-thought. Even the attempted explanation of difference between the agreement price and sale consideration price recorded that the amount of Rs.10 lakh paid in cash, Rs.40 lakh by cheque and Rs.25 lakh paid in cash on 23.04.2012, the date of agreement is 20.04.2012 was expended for eviction and clearing of encroachments is without any evidence and only afterthought. Hence, we find that no possible explanation or evidence that this

unexplained investment of Rs.69.42 lakhs admitted by the AO and confirmed by the CIT(A) has no basis for deletion. Hence, we confirm the order of CIT(A) and this issue of assessee's appeal is dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court at the time of hearing on 12th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.